

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a federal right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 120 S.Ct. 1595, 1603-1604 (2000), citing Barefoot v. Estelle, 103 S. Ct. 3383, 3394 (1983) (which defined the former standard for a certificate of probable cause to appeal) (internal quotation marks omitted). Where the district court denies a § 2255 motion on procedural grounds without reaching the underlying constitutional claims on the merits, a certificate of appealability should issue under 28 U.S.C. § 2253(c) when the defendant shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and would find it debatable whether the district court was correct in its procedural ruling. Id.

For the reasons set forth in filing no. 154, denying the defendant’s § 2255 motion, I conclude that the defendant has not made a substantial showing of the denial of a constitutional right and has not shown that this court’s order was debatable or incorrect, as required by 28 U.S.C. § 2253(c). Accordingly, a Certificate of Appealability is denied.

However, Fed. R. App. P. 22(b) permits the defendant to request a Certificate of Appealability from the Court of Appeals.

THEREFORE, IT IS ORDERED:

1. That the defendant may proceed in forma pauperis on appeal;
2. That a Certificate of Appealability is denied; and
3. That the Clerk of Court shall process this appeal to the Eighth Circuit .

DATED this 22nd day of November, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge